

# CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patrick Yu	Team: Squad #3	CCRB Case #: 201800831	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 01/17/2018 12:30 AM	Location of Incident: § 87(2)(b) 68th Precinct Stationhouse	Precinct: 68	18 Mo. SOL 7/17/2019	EO SOL 7/17/2019	
Date/Time CV Reported Tue, 01/23/2018 10:35 AM	CV Reported At: IAB	How CV Reported: E-mail	Date/Time Received at CCRB Wed, 01/31/2018 11:18 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM David Giza	06971	958638	068 PCT
2. Officers			
3. An officer			
4. POM Vitali Melnikau	20857	963160	068 PCT
5. SGT Peter Jessnik	4199	932827	068 PCT
6. LT Michael Fleming	00000	903950	068 PCT
7. SSA Nicholas Danna	05637	932517	068 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM David Giza	Abuse: At § 87(2)(b) in Brooklyn, Police Officer David Giza stopped the vehicle in which § 87(2)(b) and an individual were occupants.	§ 87(2)(b)
B.POM Vitali Melnikau	Abuse: At § 87(2)(b) in Brooklyn, Police Officer Vitali Melnikau stopped the vehicle in which § 87(2)(b) and an individual were occupants.	§ 87(2)(b)
C.POM David Giza	Force: At § 87(2)(b) in Brooklyn, Police Officer David Giza pointed his gun at § 87(2)(b)	§ 87(2)(b)
D.POM Vitali Melnikau	Force: At § 87(2)(b) in Brooklyn, Police Officer Vitali Melnikau pointed his gun at § 87(2)(b)	§ 87(2)(b)
E.SSA Nicholas Danna	Discourtesy: At § 87(2)(b) in Brooklyn, Sergeant Nicholas Danna spoke discourteously to § 87(2)(b)	§ 87(2)(b)
F.SSA Nicholas Danna	Discourtesy: At § 87(2)(b) in Brooklyn, Sergeant Nicholas Danna spoke discourteously to § 87(2)(b)	§ 87(2)(b)
G. An officer	Force: At § 87(2)(b) in Brooklyn, an officer used physical force against § 87(2)(b)	§ 87(2)(b)
H. An officer	Force: At § 87(2)(b) in Brooklyn, an officer used physical force against an individual.	§ 87(2)(b)
I. Officers	Abuse: At § 87(2)(b) in Brooklyn, officers searched the vehicle in which § 87(2)(b) and an individual were occupants.	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
J.LT Michael Fleming	Abuse: At § 87(2)(b) in Brooklyn and the 68th Precinct stationhouse, Lieutenant Michael Fleming detained § 87(2)(b)	
K.LT Michael Fleming	Abuse: At § 87(2)(b) in Brooklyn, Lieutenant Michael Fleming authorized the search of the vehicle in which § 87(2)(b) and an individual were occupants.	
L. An officer	Abuse: At § 87(2)(b) in Brooklyn, an officer searched the vehicle in which § 87(2)(b) and an individual were occupants.	
M.LT Michael Fleming	Abuse: At § 87(2)(b) in Brooklyn, Lieutenant Michael Fleming seized § 87(2)(b)'s property.	
§ 87(4-b), § 87(2)(g)		

## Case Summary

§ 87(2)(g), § 87(2)(b)

The CCRB received this complaint on February 1, 2018.

On January 13, 2018, a civilian used his vehicle to strike an officer in the vicinity of Times Square in Manhattan. On January 17, 2018, at approximately 12:30 a.m., PO David Giza and PO Vitali Melnikau of the 68<sup>th</sup> Precinct assisted New York State Troopers with a vehicle stop on § 87(2)(b), in Brooklyn (**Allegation A: Abuse of Authority**, § 87(2)(g) and **Allegation B: Abuse of Authority**, § 87(2)(g)). PO Giza and PO Melnikau pointed their firearm towards § 87(2)(b) (**Allegation C: Physical Force**, § 87(2)(g) and **Allegation D: Physical Force**, § 87(2)(g)). § 87(2)(b) was ordered out of the vehicle and NYS Troopers placed him in handcuffs. Additional officers from the 68<sup>th</sup> Precinct and the Highway command arrived on the scene. At some point, Sgt. Nicholas Danna allegedly told § 87(2)(b) “Get this fucking guy out of here. He’s not fucking paparazzi” (**Allegation E: Discourtesy**, § 87(2)(g)). Sgt. Danna also said “fuck” and “shit” while speaking with § 87(2)(b) (**Allegation F: Discourtesy**, § 87(2)(g)). Officers escorted § 87(2)(b) inside a police vehicle and an officer hit § 87(2)(b)’s knee with the vehicle’s door (**Allegation G: Physical Force**, § 87(2)(g)). While § 87(2)(b) spoke with his girlfriend, § 87(2)(b) an officer pushed § 87(2)(b) (**Allegation H: Physical Force**, § 87(2)(g)). NYS Troopers and NYPD officers searched § 87(2)(b)’s vehicle on the scene and an officer drove his vehicle to the stationhouse (**Allegation I: Abuse of Authority**, § 87(2)(g)).

Lieutenant Michael Fleming detained § 87(2)(b) seized his vehicle by authorizing an officer to drive it to the 68<sup>th</sup> Precinct stationhouse (**Allegation J: Abuse of Authority**, § 87(2)(g)). **Allegation K: Abuse of Authority**, § 87(2)(g) **Allegation L: Abuse of Authority**, § 87(2)(g) **Allegation M: Abuse of Authority**, § 87(2)(g) § 87(2)(b) was released from the stationhouse with a summons for § 87(2)(b) (Board Review 23).

§ 87(4-b), § 87(2)(g)

There is not video footage pertaining to this incident.

After referring force allegations to the NYS Troopers and the CCRBm IAB conducted a concurrent investigation into allegations of an arrest dispute which was exonerated, summons dispute which was exonerated, and force which was unsubstantiated under FI § 87(2)(b)

## Findings and Recommendations

**Allegation (A) Abuse of Authority: At § 87(2)(b) in Brooklyn, Police Officer David Giza stopped the vehicle in which § 87(2)(b) and an individual were occupants.**

**Allegation (B) Force: At § 87(2)(b) in Brooklyn, Police Officer Vitali Melnikau stopped the vehicle in which § 87(2)(b) and an individual were occupants.**

**Allegation (C) Force: At § 87(2)(b) in Brooklyn, Police Officer David Giza pointed his gun at § 87(2)(b)**

**Allegation (D) Force: At § 87(2)(b) in Brooklyn, Police Officer Vitali Melnikau pointed his gun at § 87(2)(b)**

On January 13, 2018, on West 43<sup>rd</sup> Street and 7<sup>th</sup> Avenue, in Manhattan, a black Mercedes Benz struck an officer, hit several vehicles, and then fled the scene.

On January 17, 2018, § 87(2)(b) was driving a 2009 black Mercedes Benz C63 AMG bearing license plate § 87(2)(b). In his CCRB statement, § 87(2)(b) stated that he observed NYS Troopers following his vehicle from the Verrazano Bridge to his residence on § 87(2)(b), in Brooklyn (Board Review 01). As § 87(2)(b) drove away from his residence, he saw a NYS Troopers vehicle and a NYPD vehicle in front of him; § 87(2)(b) was instructed to stop and exit his vehicle. § 87(2)(b) did not see which officer instructed him to step out of the vehicle. Additionally, § 87(2)(b) stated that he knew that one of the officers had their gun drawn because the officer hid behind the police vehicle's door, but he could not see the officers because of the bright lights from the vehicles.

§ 87(2)(g)

§ 87(2)(a) Gen.Mun. §50-H(3)

The investigation was unable to reach out to § 87(2)(b)'s girlfriend, known only as § 87(2)(b) because § 87(2)(b) stated that she did not want to participate with the investigation.

During his phone statement, § 87(2)(b) stated that he did not witness the officers stop § 87(2)(b)'s vehicle (Board Review 09).

NYS Troopers prepared an incident report noting that the NYS Troopers observed a black Mercedes with license plate number § 87(2)(b) matching the description and plate number of a "Be on the Look Out" (BOLO) (Board Review 24). PO Giza and PO Melnikau accounts were consistent with the information recorded in the NYS Troopers' report regarding the NYS Troopers' BOLO database indicating that § 87(2)(b)'s vehicle's license plate matched the license plate of the vehicle which struck an officer in Times Square. PO Giza stated that prior to arriving on the scene, Lieutenant Wernersbach informed him that NYS Troopers had the BOLO hit for a matching vehicle (Board Review 30). However, PO Melnikau stated that they were not provided with any information aside from a vehicle stop regarding a suspicious male (Board Review 02).

In their CCRB testimonies, PO Giza and PO Melnikau provided varying accounts regarding the information they received prior to responding to the scene, but they gave generally consistent accounts regarding the information they received on the scene and the actions they took (Board Review 02 and 30). Both officers stated that they were instructed by the 68<sup>th</sup> Precinct desk officer, Lieutenant Joseph Wernersbach, to assist NYS Troopers with a vehicle stop. On the scene, PO Giza stated that he was further informed by NYS Troopers that § 87(2)(b)'s vehicle matched the model of the suspected vehicle (Board Review 30). PO Giza and PO Melnikau stated that the NYS Troopers went over the loud speaker and instructed § 87(2)(b) to stop his vehicle. At this point, PO Giza, and PO Melnikau pointed their guns toward § 87(2)(b). PO Melnikau stated that the NYS Troopers also pointed their guns at § 87(2)(b). PO Melnikau and PO Giza stated that they pointed their guns at § 87(2)(b) for safety purposes based on the information they received from the NYS Troopers. PO Giza added that his gun was pointed at § 87(2)(b) because they were in the midst of a felony car stop. PO Giza and PO Melnikau both holstered their weapons at sometime between § 87(2)(b) getting on the ground being placed in handcuffs.

The investigation exhausted attempts to obtain the BOLO and on June 28, 2018, IAB stated that they did not know to obtain the BOLO document (See IA #155).

EVENT #§ 87(2)(b) indicated that NYS Troopers had a black Mercedes stopped at 92<sup>nd</sup> Street and Battery Avenue (Board Review 25). In the Communications Audio on January 17, 2018, the Central dispatcher stated that the black Mercedes involved in the attempted murder bore license plate number "§ 87(2)(b)" (Board Review 05 and 14).

The NYS Troopers' report noted that the operator was wanted for questioning in connection to the attempted murder of an NYPD police officer and directed officers that if he is found, he is to be held for the Midtown South Detective Squad (Board Review 24). In the report, it was also noted that NYS Troopers initiated the traffic stop.

According to the NYPD's Unusual Occurrence report (UF-49), on January 13, 2018, officers observed multiple vehicles driving recklessly on West 43<sup>rd</sup> Street and 7<sup>th</sup> Avenue and while attempting to stop traffic, an officer was struck by a black Mercedes "possibly § 87(2)(b) partial plate § 87(2)(b) at the location (Board Review 26). The vehicle left the scene, hit two vehicles, and the officer was transported to the hospital.

The DD5s regarding the Midtown Precinct South's investigation for the January 13, 2018 were not provided to the CCRB because it was an active case.

§ 87(2)(b) depicts § 87(2)(b)'s vehicle bearing the license plate "§ 87(2)(b)" (Board Review 21). The article also included the photo of the vehicle that struck the police office in Times Square on January 13, 2018. § 87(2)(b)'s vehicle and the vehicle connected to the Times Square incident are the same color, make, and model. There are slight differences between the two vehicles such as the grill accents and possibly the year the vehicle was produced.

Officers are entitled to rely on information received from a fellow officer, as this information is presumed reliable and accurate, People v. Powell 101 A.D.3d 756 (2012) (Board Review 16).

An officer's decision to draw his/her firearm should be based on an articulable belief that the potential for serious physical injury is present, Patrol Guide Procedure 221-01 (Board Review 17).

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

**Allegation (E) Discourtesy: At § 87(2)(b) in Brooklyn, Sergeant Nicholas Danna spoke discourteously to § 87(2)(b)**

**Allegation (F) Discourtesy: At § 87(2)(b) in Brooklyn, Sergeant Nicholas Danna spoke discourteously to § 87(2)(b)**

In his CCRB complaint, § 87(2)(b) stated that after he was placed in handcuffs, an officer identified via the investigation as Sgt. Danna stated, "Get this fucking guy out of here. He's not fucking paparazzi" (Board Review 01). Sgt. Danna closely matched the description of the subject officer (Board Review 01). Sgt. Danna is a white male, who is 6'2" tall, weighs 80 pounds, with brown hair and blue eyes, and was § 87(2)(b) old at the time of incident (Board Review 28). Sgt. Danna also exhibits a slight "lazy eye." § 87(2)(g)

§ 87(2)(g) [REDACTED]  
§ 87(2)(a) Gen.Mun. §50-H(3) [REDACTED]

In a phone statement, § 87(2)(b) stated that he heard Sgt. Danna say, "I'm tired of his shit" or "I'm tired of him. Get him in the car" (Board Review 09). He stated that he did not recall if Sgt. Danna

said the word “shit.” On the scene, § 87(2)(b) told the officers that he was going to the stationhouse with his friends and Sgt. Danna replied, “I don’t give a fuck who comes in front of the precinct,” and he also said, “Who the fuck is this,” “Who the fuck is that,” and “Your brother is not fucking famous.” § 87(2)(b) did not provide a sworn statement despite numerous contact attempts to § 87(2)(b).

As noted above, the CCRB was unable to obtain a statement from § 87(2)(b).

Sgt. Danna was interviewed at the CCRB on July 6, 2018, and on July 25, 2018. In his interview on July 6, 2018 and July 25, 2018, Sgt. Danna denied saying, “Get this fucking guy out of here. He’s not fucking paparazzi” (Board Review 07 and 08). Sgt. Danna denied using profanities and did not hear any officers do so.

In his CCRB interview, Sgt. Jessnik did not recall hearing officers say, “Get this fucking guy out of here. He’s not fucking paparazzi” (Board Review 03). In their CCRB testimony, PO Melnikau and PO Giza denied hearing officers say, “Get this fucking guy out of here. He’s not fucking paparazzi” (Board Review 02 and 30). PO Giza and Sgt. Jessnik did not hear any officers use profanities.

§ 87(2)(g)

**Allegation (G) Force: At § 87(2)(b) in Brooklyn, an officer used physical force against § 87(2)(b)**

**Allegation (H) Force: At § 87(2)(b) in Brooklyn, an officer used physical force against an individual.**

In his CCRB statement, § 87(2)(b) stated that after he told an officer to watch out for his leg, the officer closed the door of the police vehicle, police vehicle’s door striking § 87(2)(b)’s right knee (Board Review 01). § 87(2)(b) stated this might have led him to sustain a bruise on his right knee. The officer was successfully able to close the door during the second attempt to do so. § 87(2)(b) stated that he did not see which officer closed the door on his knee. While inside the police vehicle, § 87(2)(b) spoke with the victim known only as § 87(2)(b) as she stood near the police vehicle. An officer told § 87(2)(b) to move and § 87(2)(b) replied by saying, “Excuse me, why are you talking to me like that?” In response, the officer shoved § 87(2)(b) with both hands and said, “I’ll tell you what to do.” As a result of the push, § 87(2)(b) spun and was pushed back three or four steps. § 87(2)(b) described this officer as a white female in plainclothes, 5’5”-5’6” tall, heavysset, with long hair in a ponytail, and did not wear glasses. § 87(2)(b) provided a consistent account in his IAB statement (Board Review 10 and 11).

§ 87(2)(a) Gen.Mun. §50-H(3)

In his phone statement, § 87(2)(b) stated that he could not see if there were any difficulties with the officers closing the police vehicle's door as they placed § 87(2)(b) in the police vehicle (Board Review 09). § 87(2)(b) stated that he was not sure if the officers slammed the door on § 87(2)(b)'s leg. § 87(2)(b) did not state whether officers pushed § 87(2)(b).

As noted above, the CCRB was unable to obtain § 87(2)(b)'s statement.

In his CCRB statement, Sgt. Jessnik stated that § 87(2)(b) was already handcuffed inside a police vehicle with the doors closed when he arrived on the scene (Board Review 03). Sgt. Danna denied seeing officers hit § 87(2)(b)'s leg with the police vehicle's door (Board Review 08). PO Giza did not see when § 87(2)(b) was placed in the police vehicle and he did not see any officers hit § 87(2)(b)'s leg with the police vehicle door (Board Review 30).

PO Melnikau stated that he did not recall who placed § 87(2)(b) inside the police vehicle, but he did not see any difficulties when § 87(2)(b) was placed inside and he denied seeing any officers shut the vehicle's door against § 87(2)(b)'s leg (Board Review 02).

Lieutenant Fleming stated that he did not recall if there were any difficulties walking § 87(2)(b) to the police vehicle or placing § 87(2)(b) inside (Board Review 04). Lieutenant Fleming stated that his view of § 87(2)(b) was obstructed at the time and he did not know if any officers slammed the vehicle's door against § 87(2)(b)'s leg. Lieutenant Fleming did not recall if a female officer pushed a female on the scene.

In their CCRB testimonies, Sgt. Jessnik, Sgt. Danna, and PO Giza denied seeing officers place § 87(2)(b) inside the police vehicle and they denied seeing a female officer shove § 87(2)(b) (Board Review 02-04, 08, and 30).

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**Allegation (I) Abuse of Authority: At § 87(2)(b) in Brooklyn, Officers searched the vehicle in which § 87(2)(b) and an individual were occupants.**

§ 87(2)(b) and § 87(2)(b) stated that they saw NYS Troopers and NYPD officers search § 87(2)(b)'s vehicle during the incident (Board Review 01 and 09). § 87(2)(b) stated that he could differentiate NYS Troopers and NYPD officers by their uniforms. § 87(2)(b) could not describe the officers who searched his vehicle and § 87(2)(b) did not describe these officers. As noted above, § 87(2)(b) and § 87(2)(b) did not provide a sworn statement.



§ 87(2)(a) Gen.Mun. §50-H(3)

In his CCRB statement, Sgt. Jessnik stated that he did not recall if he searched § 87(2)(b)'s vehicle and he did not recall if any officers did so (Board Review 03). Moreover, Sgt. Jessnik did not recall if he or Lieutenant Fleming instructed any officers to search § 87(2)(b)'s vehicle. In his CCRB interview on July 25, 2018, Sgt. Danna did not see Lieutenant Fleming, Sgt. Jessnik, or NYS Troopers search § 87(2)(b)'s vehicle and he did not see any NYPD officers near § 87(2)(b)'s vehicle (Board Review 08). Sgt. Danna denied searching § 87(2)(b)'s vehicle and he was not informed that officers searched the vehicle.

In his CCRB statement, Lieutenant Fleming stated that he used a flashlight to look at the exterior of the vehicle to check the paint and see if there were any damages to the vehicle and to check if the vehicle had been painted because the vehicle involved in the incident in Times Square would have been damaged (Board Review 04). Lieutenant Fleming did not see any damages or fresh paint on § 87(2)(b)'s vehicle. Lieutenant Fleming did not recall searching inside § 87(2)(b)'s vehicle. Additionally, he did not recall if the trunk of § 87(2)(b)'s vehicle was opened on the scene. Lieutenant Fleming did not recall if any officers searched the interior of the vehicle or the trunk of the vehicle.

PO Melnikau stated that neither he nor PO Giza searched the vehicle and he did not believe that § 87(2)(b)'s vehicle was searched (Board Review 02). PO Giza denied seeing any officers standing around § 87(2)(b)'s video and he did not see any officers enter or search § 87(2)(b)'s vehicle (Board Review 30). PO Giza was not informed that § 87(2)(b)'s vehicle had been searched.

§ 87(2)(g)

**Allegation (J) Abuse of Authority: At § 87(2)(b) in Brooklyn and the 68th Precinct stationhouse, Lieutenant Michael Fleming detained § 87(2)(b)**

**Allegation (K) Abuse of Authority: At § 87(2)(b) in Brooklyn, Lieutenant Michael Fleming authorized the search of the vehicle in which § 87(2)(b) and an individual were occupants.**

**Allegation (L) Abuse of Authority: At § 87(2)(b) in Brooklyn, an officer searched the vehicle in which § 87(2)(b) and an individual were occupants.**

**Allegation (M) Abuse of Authority: At § 87(2)(b) in Brooklyn, Lieutenant Michael Fleming seized § 87(2)(b)'s property.**

It is undisputed that Lieutenant Fleming authorized officers to transport § 87(2)(b) and his vehicle to the stationhouse, and § 87(2)(b) was eventually released two summonses. It is also undisputed that § 87(2)(b)'s neighbors and family/friends were on the scene as he was in handcuffs.

In his CCRB statement, § 87(2)(b) stated that he was handcuffed, transported to the 68<sup>th</sup> Precinct stationhouse, and then placed inside a holding cell (Board Review 01). Approximately 2

½ to 3 hours later, while at the stationhouse, § 87(2)(b) was informed by officers that his vehicle's plate showed up as a stolen plate in Texas and they thought his vehicle was involved in the Times Square incident. § 87(2)(b) stated that he was released at approximately 3:00 a.m.

§ 87(2)(g)

As stated above in Allegations A-D, PO Giza and PO Melnikau assisted NYS Troopers with a vehicle stop regarding a vehicle suspected to have been involved in striking an officer in Times Square on January 13, 2018. Additionally, the BOLO information from the NYS Troopers' report has been discussed in Allegations A-D. Sgt. Danna stated that the Midtown South command had a BOLO which generated an alert for license plate numbers of the vehicles that were possibly on the scene of the Times Square incident on January 13, 2018 and he was informed by the NYS Troopers that § 87(2)(b)'s vehicle's license plate matched the plate numbers of a vehicle that the NYPD was looking for (Board Review 08). Sgt. Jessnik stated that the BOLO for license plates of multiple vehicles that were present was disseminated across New York State, but he did not have any of the suspected license plates (Board Review 03). Lieutenant Fleming added that the BOLO also included the description of the suspected vehicle and § 87(2)(b)'s vehicle had a matching license plate (Board Review 04).

Lieutenant Fleming, Sgt. Jessnik, PO Giza, and PO Melnikau all stated that they observed several civilians on the scene, but their accounts of how many civilians varied from three people to ten people. PO Giza did not recall if the civilians did or said anything (Board Review 30). PO Melnikau did not know if officers addressed the crowd, but he denied having a concern with the crowd (Board Review 02). Sgt. Jessnik stated that the officers tried to keep the civilians back and they were compliant "for the most part," but the civilians appeared to be aggravated and unhappy (Board Review 03). Lieutenant Fleming stated that the members of the crowd interfered with the officers' duties by continuously trying to get in between the officers and speak with § 87(2)(b) (Board Review 04). Lieutenant stated that he repeatedly warned the people to get back.

In his CCRB statement, PO Giza stated that Lieutenant Fleming instructed him to transport § 87(2)(b) back to the stationhouse (Board Review 30). PO Giza assumed that § 87(2)(b) was being transported for further investigation, but he was not informed of this. At the stationhouse, PO Giza was informed by a NYS Trooper that § 87(2)(b)'s vehicle was not an exact match to the wanted vehicle. However, PO Giza was not informed of any details that led the State Troopers to believe that it was not a match. PO Giza denied taking any investigative steps. In his CCRB interview, PO Melnikau stated that he ran a check of § 87(2)(b)'s license plate to confirm the information NYS Troopers provided to them, but he did not recall what information yielded as a result (Board Review 02).

In his CCRB interview on July 25, 2018, Sgt. Danna stated that prior to this incident, the only information he had was that an officer was hit by a black Mercedes Benz in the confines of Midtown South and that the suspect had fled the scene (Board Review 08). At some point during this incident on January 17, 2018, Sgt. Danna spoke with Sgt. Burns and Det. Darcy of Midtown South via phone to request details of the suspected vehicle. Sgt. Danna stated that Sgt. Burns and Det. Darcy gave him the description of the vehicle, but he did not recall any details of the conversation. Sgt. Danna denied taking additional investigative steps regarding the vehicle stop or

to confirm whether § 87(2)(b)'s vehicle was involved and he did not recall the conversations he had with Lieutenant Fleming and Sgt. Jessnik on the scene. Sgt. Danna stated that when he returned to the stationhouse, § 87(2)(b) was leaving the stationhouse and he was not informed why § 87(2)(b) was released.

In his CCRB interview, Sgt. Jessnik stated that he did not know what information was disseminated in regards to the incident where an officer was struck by a vehicle in Times Square, but he was aware of the incident from the news (Board Review 03). Sgt. Jessnik stated that they did not know if § 87(2)(b)'s vehicle matched the vehicle that struck the officer and that they were trying to figure that out. Sgt. Jessnik only recalled that both vehicles were high-end sports cars. At some point, Sgt. Jessnik stated that Lieutenant Fleming called the Manhattan detectives to ascertain if the vehicle that was stopped was the vehicle that struck the officer in Times Square, but Sgt. Jessnik did not recall if he was informed of the outcome of the call. Sgt. Jessnik stated that it was Lieutenant Fleming's decision to bring § 87(2)(b) back to the stationhouse because it was "dynamic" situation at the time and to conduct a further investigation. Sgt. Jessnik stated that § 87(2)(b)'s vehicle was driven back to the stationhouse to conduct further investigation, but Sgt. Jessnik did not recall who drove § 87(2)(b)'s vehicle. Sgt. Jessnik stated that Lieutenant Fleming continued his investigation at the stationhouse by making phone calls. Sgt. Jessnik did not recall if Lieutenant Fleming provided him with additional information and he did not recall Lieutenant Fleming informing him of the outcome of his investigation.

In his CCRB testimony, Lieutenant Fleming stated that on January 17, 2018, he was aware of the incident regarding the attempted murder of a police officer in Times Square on January 13, 2018, from the news and seeing the "be on the lookout" (BOLO) (Board Review 04). On the scene, Lieutenant Fleming was informed by one of the NYS Troopers that § 87(2)(b)'s vehicle matched the description. Lieutenant Fleming stated that it was his decision to have § 87(2)(b) removed to the stationhouse for everyone's safety and because he was believed to be wanted for the attempted murder of a police officer from Manhattan. As stated above, Lieutenant Fleming did not see any damage or fresh paint on § 87(2)(b)'s vehicle because he knew that the suspected vehicle had clipped other cars. Lieutenant Fleming stated that he did not find out if the vehicle matched until he returned to the stationhouse. Lieutenant Fleming stated that he did not recall directing an officer to transport § 87(2)(b)'s vehicle back to the stationhouse, but he stated that he must have done so to conduct further investigation and for a more controlled environment. At the stationhouse, Lieutenant Fleming found out that it was later determined that § 87(2)(b)'s vehicle was not part of the Times Square incident. Lieutenant Fleming stated that the Midtown Detective Squad decided that § 87(2)(b) was not involved. Lieutenant Fleming stated that he believes a Sergeant spoke with Midtown Detective Squad, but he did not recall how it was determined that § 87(2)(b) was not involved. Lieutenant Fleming did not recall conducting any further investigation in regards to § 87(2)(b)'s license plate matching the BOLO.

Between 3:10-3:36 minutes in the 911 Communications audio, the Central dispatcher confirmed that the license plate number "§ 87(2)(b)" was the license plate of the black Mercedes involved in the attempted murder. At 27:38 minutes, the Highway Lieutenant confirmed that § 87(2)(b)'s vehicle's license plate was related to one of the plates regarding the hit and run incident that injured an officer (Board Review 05). In a separate 911 Communications recording, the

Central dispatcher stated that Manhattan South Detective Squad had cancelled the BOLO because the plate number § 87(2)(b) was incorrect (Board Review 06). The summaries of the 911 Communications recordings can be found at Board Review 14. EVENT #§ 87(2)(b) indicated that the cancellation of the BOLO was relayed at approximately 1:52 a.m. (Board Review 25).

As noted above, the NYS Troopers documented their observations in an incident report (Board Review 24).

Also noted above, the UF-49 was prepared for the January 13, 2018 incident involving an officer being struck in Times Square and the description and partial plate number was recorded (Board Review 26). A UF-49 had not been prepared for the incident on January 17, 2018.

§ 87(2)(b)

In IAB case number FI § 87(2)(b) allegations of an arrest dispute were exonerated based on the information provided by NYS Troopers regarding the BOLO alert.

Being taken involuntarily, handcuffed, transported to a police station, and then held in a barred cell for over two hours, turns a detention into an arrest, People v. Robinson, 282 A.D.2d 75 (2001) (Board Review 19). The scope of a reasonable investigatory detention will vary to some extent depending on the facts and circumstances of each case. The detention must be temporary and only necessary to effectuate the purpose of the stop. The least intrusive reasonably available methods should be used employed to verify or dispel the officer's suspicion.

When evaluating whether an investigative detention is unreasonable, common sense and ordinary human expertise must govern over rigid criteria, People v. Hicks, 68 N.Y.2d 234 (1986) (Board Review 18). It should also be considered whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant.

Patrol Guide Procedure 218-19 states that officers can seize vehicles as arrest evidence, investigatory evidence, for forfeiture proceedings or to determine the true owner (Board Review 20).

§ 87(2)(g)

§ 87(2)(g) [Redacted text block]

§ 87(2)(g) [Redacted text block]

§ 87(2)(g) [Redacted text block]

§ 87(4-b), § 87(2)(g) [Redacted text block]

[Redacted text block]

[Redacted text block]

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 32).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 33).
- Without a full name or date of birth, a query of § 87(2)(b)'s CCRB history could not be completed.
- PO Giza has been a member of service for three years and this is the first CCRB complaint to which he has been a subject.
- PO Melnikau has been a member of service for one year and this is the first CCRB complaint to which he has been a subject.
- Lieutenant Fleming has been a member of service for 25 years and has been a subject in five CCRB complaints and seven allegations, none of which were substantiated.

§ 87(2)(g)

- Sgt. Danna has been a member of service for 15 years and has been a subject to one CCRB complaint and one allegation which was not substantiated. § 87(2)(g)
- Sgt. Jessnik has been a member of service for 15 years and has been a subject to two CCRB complaints and four allegations, none of which were substantiated. § 87(2)(g)

### **Mediation, Civil and Criminal Histories**

- This complaint was not suitable for mediation.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming negligence, false arrest, false imprisonment, assault and battery, unlawful detention, personal injuries, violation of claimant's civil rights, violation of 4 USC 1981, malicious prosecution and seeking five million dollars. A 50H Hearing was held on § 87(2)(b) can be found at Board Review 29.

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date